

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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**CELESTE WILLIAMS, LAUREN CRUZ,
EMANUEL O'NEALE, BRANDON
STURMAN, LATRESHA HALL,
LAKEISHA MITCHELL, CHRISTINE
BORBELY, JULIE GARIBALDI and
JANINE APONTE, on behalf of themselves
and others similarly situated,**

INDEX NO: 07cv3978-LAP

Plaintiffs,

v.

**TWENTY ONES INCORPORATED d/b/a
THE 40/40 CLUB, SHAWN CARTER p/k/a
JAY-Z, JUAN PEREZ and DESIREE
GONZALES,**

Defendants.

-----X

DECLARATION OF ANITA GILLETTE

I, Anita Gillette, under penalty of perjury, affirm as follows:

1. I am a New York resident and an opt-in plaintiff in the above-captioned matter.
2. I submit this declaration based on personal knowledge unless indicated otherwise.
3. I was employed as a Server at The 40/40 Club sports bar located at 6 West 25th Street from approximately May through September of 2006.
4. Throughout my employment at The 40/40 Club, I was not paid the minimum wage for each hour that I worked. Instead, I only received tips. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know that

Exhibit C-3

it was the common practice of defendants to not pay its employees who received tips a minimum wage and/or hourly wage for any hours of work.

5. Based on conversations with Latoya (last name unknown) and other employees, I know that it was the common practice of defendants to not provide paychecks to its employees. I received paychecks, but only after I constantly demanded them. These paychecks were for “zero-dollar” and did not contain what I believe is accurate information (such as my rate of pay, tax deductions or hours of work) so I have no reason to believe they are correct. Therefore, I did not receive anything which reflected my hours of work, the wages I was supposed to receive, or any withholdings for taxes.

6. During my employment, I regularly worked more than forty hours in a week. However, I was not paid time and a half for hours worked in excess of forty in a week. The 40/40 Club’s failure to pay overtime is reflected in the time report attached as Exhibit A. Based on conversations with other employees of The 40/40 Club and what I witnessed, I know it was the common practice of defendants to not pay its employees an overtime premium. For example, I believe that Larry, Gloria and Ashfar (last names unknown) worked more than 40 hours without being paid overtime at time and a half

7. The time report attached as Exhibit A also shows that I worked in excess of ten (10) hours per workday for defendants but I was never paid a “spread of hours” premium. I have personally witnessed other employees working shifts of more than ten (10) hours. Among these employees are Larry, Gloria and Ashfar (last names unknown). Based on conversations with these employees, I know it was the common practice of

defendants to not pay a “spread of hours” premium for workdays in excess of ten (10) hours.

8. Attached as Exhibit B are my alleged payroll reports provided by defendants and shown to me by my lawyers. I did not receive any payroll reports during my employment at The 40/40 Club. Therefore, I never saw these documents prior to this lawsuit. Moreover, I have no reason to believe that these alleged payroll reports are an accurate reflection of my working hours at The 40/40 Club.

9. Attached as Exhibit C are my alleged W-2s provided by defendants and shown to me by my attorneys. Throughout my employment at The 40/40 Club, I never received a W-2 and have never seen these documents prior to this lawsuit. Furthermore, I have no reason to believe that these alleged W-2s are an accurate reflection of what I was actually paid in wages.

10. I believe that portions of my tips were retained by defendants. The 40/40 Club did not provide us with, or require us to fill out, any sort of tip declaration form. Because The 40/40 Club did not provide us with any records establishing the amount of tips I should have received, I have no independent means of verifying these amounts. However, based on the tips given to me by patrons and what was eventually paid to me by defendants, I believe that I did not receive all of my tips due.

11. If a patron of The 40/40 Club did not sign their credit card receipt, defendants retained the disputed tip for ninety (90) days. Defendants gave me a copy of this policy, which is attached as Exhibit D. This happened to me personally- as evidenced by a disciplinary write-up I received and which is attached as Exhibit E- as well as to other employees that I know. Therefore, based on my personal experience and

the experiences of other employees at The 40/40 Club, I know this was the common practice of defendants.

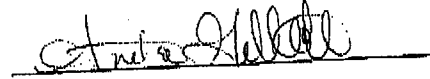
12. I was not paid any direct wage by The 40/40 Club. Because The 40/40 Club never paid me any direct wages, I was not paid the wages I was owed in a timely manner. Other employees, including Latoya (last name unknown), have reported to me that they were not paid any direct wages by The 40/40 Club. Therefore, I know that it was the common practice of defendants to not pay its employees in a timely manner.

13. If a patron left The 40/40 Club without paying the bill, defendants would force its employees to pay the bill with his/her own money. For example, Latoya (last name unknown) had a customer walk out without paying and The 40/40 Club required her to pay the full amount of the bill. Defendants tested me on this policy in a "Server Quiz" (a copy of this quiz is attached as Exhibit F). In question number 29, I correctly answered that a server would be responsible for paying the bill of a guest who leaves without paying.

14. Similarly, The 40/40 Club forced employees to pay for breakages, spills, and the like. I know this was the policy at The 40/40 Club because I personally witnessed this happen to another employee.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 12 day of January, 2008.

A handwritten signature in cursive script, appearing to read "Anita Gillette", is written over a horizontal line.

Anita Gillette

EXHIBIT A

40/40 NYC

PAGE: 1

REPORT DATE: 07/17/2007

REPORT TIME: 23:29:27.78

Payroll Report for the period from Mon Jun 5, 2006 to Sun Jun 11, 2006

REG regular OTW ovt-week OTD ovt-day MSC mis pay SAL salary ADJ adjustment DEL deleted punch * Rate changed in punch
 Types of punches not included in regular or overtime calculation: PADJ prev.period adjustment HOL holidays SHDF shift diff.pay

GILLETTE, ANITA	0778	Department	Job	Tips	Pool	Type	Hours	Rate	Total
End Date: 06/19/06		FRONT OF HOUSE	SERVER	41.70		REG	40.0000	3.850	154.00
						OTD	12.7667	0.000	0.00
Total: 40.0000 regular hours (154.00)and 12.7667 overtime hours(0.00) and 0.0000 other hoursTotal Amt									154.00

Department	Job	Day	Date	Rate	Type	In	Out	Hrs
FRONT OF HOUSE	SERVER	Mon.	6/5	3.850*		6:19p	2:30a	8.18
		Thu.	6/8	3.850*		5:51p	2:01a	8.17
		Fri.	6/9	3.850*		8:00p	6:45a	10.75
		Sat.	6/10	3.850*		6:56p	6:14a	11.30
		Sun.	6/11	3.850*		11:58a	2:20a	14.37

***Total wages for selected employees: 154.00

POSitouch

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EXHIBIT B

EMPLOYEE EARNINGS RECORD

PAYROLLS BY PAYCHEX.

FOR CHECKS DATED THROUGH 09/30/06 09/29/06

0020-Y156 TWENTY ONES INCORPORATED

[illegible]

GUILLETTE ANITA

1000
DECEMBER
1941

PREVIOUS LAST	REV'D	DATE	LAST REVIEW

20/20

13-JUL-2007 11:46 AM PAYCHEX 7329268308

Redacted

EXHIBIT C

Form W-2 Wage and Tax Statement 2006				EMPLOYER REFERENCE COPY - DO NOT FILE			
a Control number 0020-Y156 000522-000100		b Employee's name, address, and ZIP code TWENTY ONES INCORPORATED 6 WEST 25TH STREET NEW YORK NY 10010		Department of the Treasury - Internal Revenue Service OMB No. 1545-0008			
c Employee's identification number 55-0787351		d Employee's social security number [REDACTED]		1 Wages, tips, other compensation 7517.40		2 Federal income tax withheld 748.84	
e Employee's name, address, and ZIP code ANITA GILLETTE [REDACTED]		f Employee's name, address, and ZIP code [REDACTED]		3 Social security wages 1583.40		4 Social security tax withheld 466.09	
12 See Instrs. for Box 12		14 Other NYSDI 7.20		5 Medicare wages and tips 7517.40		6 Medicare tax withheld 109.01	
15 State NY		Employer's state ID No. 550787351		16 State wages, tips, etc. 7517.40		17 State income tax 54.95	
18 Local wages, tips, etc. 7517.40		19 Local income tax 193.21		20 Locality name NY NYC			
7 Social security tips 5934.00		8 Allocated tips		9 Advance EIC payment		10 Dependent care benefits	
11 Nonqualified plans							

Y156

Redacted

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EXHIBIT D

**THE 40/40 CLUB POLICY AND PROCEDURE EMPLOYEE
UNDERSTANDING**

NAME Anita Gillette

DATE 05.12.06

POSITION Server

I UNDERSTAND THE FOLLOWING POLICY'S,
THEY HAVE BEEN EXPLAINED. WRITTEN,
READ AND DISCUSSED AT VARIOUS
MEETING'S.

1. THERE IS A SIX STEP CREDIT CARD
PROCEDURE, IT IS POSTED AND IF NOT
FOLLOWED MAY CAUSE MY PAYMENT OF
THE FULL AMOUNT OF THE CHECK IN
QUESTION.
2. THERE IS ZERO TOLERANCE POLICY FOR
DRUG SALE OR USE BY AN EMPLOYEE OR
CUSTOMER. ALCOHOL USE BY AN
EMPLOYEE, SERVING TO MINORS OR
INTOXICATED PATRON'S. THERE ARE
PROCEDURES THAT I MUST FOLLOW IF
ANY OF THE ZERO TOLERANCE INCIDENTS
OCCUR.
3. I MUST BE FLUENT IN ALL MENU ITEMS.
4. I MUST ATTEND WEEKLY MEETINGS.

EXHIBIT E

NY ☒ AC ☐

NOTICE OF DISCIPLINARY ACTION

EMPLOYEE NAME: Anita Gillese DATE: _____

POSITION: Server DATE OF INFRACTION: _____

TYPE OF WARNING:

WRITTEN ☒
FINAL WARNING ☐
SUSPENSION ☐

Please understand that this is the most serious action taken by management, short of dismissal. Repetition of this infraction will result in termination of your employment.

NATURE OF INFRACTION:

Anita did not get credit card
Imprint Signed

EMPLOYEE COMMENT:

ACTION TAKEN:

Tip money is being held for
90 days

I, the employee, have read the above and understand its implications.

Sign: Anita Gillese

Print: _____

Manager: [Signature]

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EXHIBIT F

7/1/08

Anita Corlizzo

SERVER QUIZ

PART (1) MATCH-UP

MATCH THE DRINK NAME WITH APPROPRIATE INGREDIENTS

- | | |
|--------------------------------|---|
| 1) COCO <u>F</u> ✓ | A) Absolut Vanilla, Godiva White, chocolate swirl |
| 2) MOJITO <u>D</u> ✓ | B) Remy VSOP, blue caracao lime juice |
| 3) 40/40 <u>A</u> ✓ | C) Grey Goose Oranj w/ various juices |
| 4) PUNCH <u>C</u> ✓ | D) Bacardi Limon, lemon-lime soda, lime, mint leaves, sugar cane |
| 5) SEX & THE CITY <u>H</u> ✓ | E) Baileys, Khalua & Cherry liqueur |
| 6) CREAM & CHERRIES <u>E</u> ✓ | F) Southern Comfort, Amaretto, triple sec, sloe gin, oj. |
| 7) NY SLAMMER <u>F</u> ✓ | G) Smirnoff Orange, Cruzan Coconut Rum, pineapple juice |
| 8) BONDS HOME RUN <u>G</u> ✓ | H) Alize Red Passion, vodka, cranberry juice |
| 9) BLUE YANKEE <u>J</u> ✓ | I) Malibu, pineapple & cranberry juice |
| 10) BLUE SHARK <u>B</u> ✓ | J) Armadale, Bacardi 151, blue caracao, lime juice |

PART (2) GENERAL QUESTIONS

- How much is a gold membership? \$1000.00 ✓
- Name 3 benefits of the Purple membership.
Voucher for ROOM
~~Immediate entry to club~~ ✓
~~Free Retail~~
- Name our 3 private rooms
 a. Remy Lounge
 b. Esprit Hall do same → spoke ✓
 c. Day 2
- What does it mean to "upsell" and how does it benefit you?
to sell higher quality brand and item
(that cost more) to benefit your sale
+ tips + the club. ✓
- How many different menus do we have?
3 menus bottles / dinner + cocktails / Shok ✓

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28. What energy drink do we carry? *RED BULL* ✓

29. If a guest leaves without paying for a check, who is responsible for paying it? *THE SERVER.* ✓

30. Where are the memo boards and why are they important?

The memo boards are in both service stations; they are important b/c they have information pertaining to the job and club. ✓

PART (3) PROCEDURES

1. Describe in detail the procedure for taking credit cards:

- Take credit card P ID (make sure that everything matches) ✓
- Pre-authorize the card
- MAKE AN IMPRINT
- COPY DRIVER # DOWN on the imprint
- MAKE SURE patron sign the matching signature, on the imprint + credit card copy

2. What is the procedure if you have a suggestion or an anonymous comment?

Put it in the comment box or address it @ the meeting. ✓

3. What is a procedure if you are serving a pre-paid room with a BEO?

look in the top right corner to see what to need from the client. Then follow the directions given. ✓

4. What is the procedure if you forget to clock out?

Call a manager to have them clock you out. ✓

5. What is the procedure when going on break?

Inform a manager. ✓

6. What is the procedure if a guest is too intoxicated?

Let a manager know immediately. X

7. What is the procedure if a credit card does not swipe?

Get another CARD! X